



# *The Unlawful Notary*

BY JOANNA LILLY

Notaries, you know the rules. We all do. You have to do it right. But often notaries are asked to make exceptions to the rules, by friends, family, and employers; and when they do, these notaries frequently find themselves before a judge explaining why, and paying huge settlements to cover the damage done by their actions! Some of the cases detailed in this article resulted in large settlements and some did not; some are not yet resolved. All notary wrongdoing may be subject to fines, judgments against your good name, damage to your reputation and employability, and worse! Read the following documented cases against notaries, (some of which you may have seen before) and think of these whenever you want a reason to refuse to cooperate with unlawful requests.

Although many of these cases do not involve employers, remember this: employers are often held responsible for the acts of their notaries! As previously reported, notary experts from Chicago's John Marshall Law School have done extensive research on the judicial system's rulings involving the acts of notaries within the scope of their employment. According to their findings, the employer can and will be held responsible for the employee's actions, including negligent ones, as long as those actions take place within the scope of the employee's duties. This is commonly referred to as vicarious liability. In the course of performing their standard duties, notaries directly represent the businesses for which they work.

Many cases involving employer liability come about from notaries performing duties without asking for identification or requiring personal appearance of the signer, frequently when an employer insists the notary skip these important steps. This should not be an issue, once the employer realizes that the company may be liable in any lawsuit against the notary. Notaries, make your employers

aware of their potential liability if they insist on unlawful notarizations. And employers, be sure your notaries are members of ASN and receive notary education: there is a positive link between an educated notary and reduced liability. Most states have no requirements regarding notary education or testing. One state requires education; ten states require testing. It has been our experience that education is much more effective than a test; education is the key to being a protected notary.

For class schedules or home study materials, call ASN at 800-522-3392.

It is also strongly recommended that notaries carry Errors and Omissions insurance. If a notary is bonded, the bond company will pay a claim, but the notary will then have to repay the bond company the amount of the claim. Without Errors and Omissions insurance, the notary may be held liable for thousands of dollars in damages caused by an improper act.

These are just a few of the volumes of cases that underscore the importance of your adherence to law and sound notarial principles, accuracy, and good recordkeeping, which will enable you to prove you acted properly if ever questioned about a notarial transaction. We greatly appreciate these cases contributed from around the nation.

*The following Florida cases were submitted by Carrie Boyd of the Governor's Legal Office in an effort to educate notaries on a national level:*

## ◆ **All in the Family**

A Florida notary was charged with organized fraud and perjury and will be unable to renew a notary commission in the state of Florida. He and his daughter have been charged with 84 counts of organized fraud due to improperly notarizing each other's signatures on

fraudulent real estate documents and laundering money through church donations.

### ◆ **Dead Man Walking**

A Florida notary was convicted of two counts of forgery, two counts of making a forged instrument, and two counts of notary fraud. On one occasion he had forged a deceased man's signature on a deed and then notarized the same signature; on several occasions the notary, who is not an attorney, gave legal advice and prepared legal documents, resulting in substantial harm and loss of money.

The notary was suspended from office by the Governor and then removed from office by the State Senate.

### ◆ **Alias Smith and Jones**

A carefully planned forgery resulted in a man, Mr. Jones, and woman, Mrs. Smith, obtaining a deed to property owned by the woman's husband, Mr. Smith. The "boyfriend", Mr. Jones, pretending to be Mr. Smith, forged Smith's name on a document transferring ownership of the man's home from Mr. Smith to Mr. Jones. The couple then visited a notary at a local bank, whose responsibility it was to verify that the signature on the deed was that of the owner, Mr. Smith, and take his acknowledgment. Mrs. Smith introduced her "husband," portrayed by Mr. Jones, who then signed the name of Mr. Smith on the deed in the presence of the notary. The notary then notarized the deed without verifying the identity of the signer. Mr. Jones secured the title to the house and quickly sold it to an innocent third party for \$250,000, and then flew off with Mrs. Smith and the cash. Once the real Mr. Smith discovered what had happened, he sued the only parties available - the notary and the bank where the notary was employed. He received a judgment of \$230,000.



### ◆ **Order in the Court**

A notary employed by a law firm agreed to notarize signatures on several documents as a favor to a co-worker's husband. Neither of the document signers appeared before the notary. Unknown to the notary, the husband was engaged in a fraudulent bond transaction involving the documents, and the individuals whose signatures were notarized did not actually have authority to sign them. A highway subcontractor lost a contract with the State Department of Transportation as a result of the fraudulent transaction.

The company sued the husband, the law firm, and the

notary and won a default judgment for more than \$350,000 against the husband. However, the trial court granted summary judgment in favor of the law firm and the notary, concluding that the improper notarization was not the proximate cause of the contractor's losses. The District Court of Appeal reversed, saying the contractor relied on documents without knowing that the notary had failed to verify the signer's identities. The Court stated, "(the notary's) obligation is quite simple: she must either know or have properly identified the affiants that appear before her, and she must administer the proper oath. If business cannot depend on notaries doing this simple task, then there is no place for notaries in the world of commerce."

### ◆ **Tampa Notary Performs Wedding for Bride in Coma**

A highly unusual case you may remember: In Tampa, Florida, a notary public officiated at a wedding between an unscrupulous boyfriend and his comatose fiancée. With a marriage license forged by the notary, two to four hours before Ms. Constance Sewell died from an aneurysm, the notary performed the bedside wedding involving a "bride" who was not even aware there was a wedding. Mr. Robert H. Meier, the "groom," then went on a \$20,000 spending spree on his deceased bride's credit cards, forging her name on the receipts.

Another notary in Florida notarized a new will, days after the death of Ms. Sewell, which robbed Ms. Sewell's mother and niece of their inheritance and gave her approximately \$250,000 estate to Mr. Meier. "I thought I had seen every way to steal, scam or con people out of money, but it was hard to believe someone would do this," the detective on the case was quoted as saying.

*Florida law does not require a test or any notary education class before obtaining a notary commission.*

*Angela Burnette, of the Alston & Bird Law Firm in Atlanta, Georgia, submitted this landmark case, dismissed due to an improper notarization:*

### ◆ **Georgia Court Case Dismissed Due To Notary Error**

A judge dismissed a medical malpractice case in Georgia on August 21, 1997, due to insufficient notarization of an affidavit taken from the plaintiff's medical expert.

The plaintiff filed a suit against a doctor and his professional corporation due to her dissatisfaction with her plastic surgery. The notary performed the notarization of the signature of the witness, who lived in Michigan, after a phone conversation. In addition to failing to require personal appearance of the "signer," the defendants contend that the

notary backdated the affidavit to state the date of that conversation - not the actual date the notary signed the affidavit.

The lawsuit was dismissed when the trial court found that a telephone oath between the plaintiff's paralegal notary in Georgia and the expert in Michigan did not constitute an effective, valid notarization of the affidavit. The court relied upon a 1912 Georgia case, *Carnes v Carnes*, 138 Ga 1 (74 SE 785) (1912) to hold that "the administering of an oath via telephone will not create a valid affidavit."

The plaintiffs appealed the dismissal, but on February 9, 1998, the Georgia Court of Appeals held that the dismissal was proper. Plaintiffs made two attempts to appeal, but the Georgia Supreme Court refused to accept the case.

In a more recent, nearly identical Georgia case, a trial court granted a motion for summary judgment to another doctor being sued for malpractice. This case was reviewed and the motion was granted when it was determined that, as above, the expert signed the affidavit in Michigan and the notary attested it in Georgia after administering the oath during a telephone conversation. The Supreme Court affirmed the grant of summary judgment. According to Black's Law Dictionary, an affidavit is a statement under oath "taken before a person having authority to administer such oath." Personal appearance is required, and the notary did not have the signer personally appear at the time of notarization.

An argument was presented that the "personal appearance" requirement is outdated and does not reflect modern law practice. Text from the presiding justice states that ... "the administration of an oath and the proper attestation of documents is not irrelevant, however, simply because the means of communication have changed greatly since the first part of this century. The law continues to recognize the important function notaries perform in acknowledging, attesting, and verifying a wide variety of documents. The notary's statement attesting the genuineness of signatures and documents aids in the prevention of fraud and deceit. Therefore, we reaffirm our prior holding that notarization occurs only when the affiant or person acknowledging execution personally appears before the notary."

### ◆ **Arizona Notaries Must Uphold Laws**

In Arizona, a notary and Republican National Committeewoman agreed to pay \$3,000 and surrender her notary public seal as a penalty for notarizing the forged signature of a U.S. Representative on an election document.

The notary agreed to pay \$1,500 to the state and \$1,500 to Maricopa County to cover the costs of the investigation, and agreed to never again act as a notary public in the state of

Arizona. She resigned her commission last summer.

The Committeewoman notarized the forged signature on an Affidavit of Qualification which candidates must file with the state to affirm their legal qualification for office. She stated that the U.S. Representative had signed it, but later admitted she did not see the signing of the document.

The notary agreed that it was "inappropriate for her to have notarized a signature of someone who did not appear before her."

"That's the whole purpose for the notary statute, so there can be confidence in the authenticity of the signature," said a special assistant in the County Attorney's Office. The notary declined comment.

*From Audrey Pugh, California Secretary of State's Office, came this report:*

### ◆ **Forgery, Fraud and Fines - California Notary Public Receives Criminal Conviction**

In January, 1999, a California notary public pled guilty to a felony violation of Penal Code Section 115, offering a forged instrument to be registered in a public office within the state, and Penal Code Section 118, for perjury.

The notary was sentenced in July and ordered to pay a fine of \$750 and perform 200 hours of community service. Upon completion of these provisions, the notary's case will be eligible for dismissal.

*California notaries public are required to pass a state examination and be fingerprinted before being awarded a notary commission.*

### ◆ **New Jersey Notary Sued for \$400,000**

This case involves a veteran New Jersey notary who is also a licensed insurance agent and owner of a large, independent insurance agency. This notary has learned the importance of requiring personal appearance.

A client of many years asked the agent/notary to notarize his and his wife's signatures on an insurance bond indemnification form holding their construction firm responsible for the costs and timely completion of a million dollar building. (The form indicated the couple's construction business would complete the building on time, and if it didn't, the insurance bond company would pay to have the construction project completed and would then have the right to reclaim the claim costs from the couple). The husband/contractor told the agent that his wife was out of town and as they wanted to get the construction job moving, she had signed the form before she left. He asked the agent to notarize both their signatures, and unfortunately for the agent/notary, he notarized the sign-

atures without requiring the personal appearance of the wife.

The husband then used the indemnification form as collateral to get the bank loan for the project and once he did, he left town, defaulting on the project. The bond company had to complete the building at a staggering cost of over \$400,000, then filed suit against the husband and wife to reclaim their money. The wife is now suing the notary, saying she never signed the form.

The notary said there was one jurat for both signatures and admits the wife did not appear, only the husband did; and alleged that the husband forged his wife's signature.

This case is pending. Obviously if this notary had insisted on personal appearance of both signers, he would not currently be involved in this case.

*New Jersey law does not require a test or any notary education class before obtaining a notary commission.*

*The following Pennsylvania cases were submitted by Peter Kovach, Prosecuting Attorney for the Pennsylvania Department of State:*

#### ◆ **Commonwealth v. Downing, 357 A.2d 703 (Pa. Commw. 1976).**

In this case, a notary failed to require the personal appearance of the signer of a document (a patient in a state-run hospital.) The notary provided evidence that she failed to require the personal appearance of the signer because the hospital's policy was to have a hospital staff member obtain the signature and then later provide the signed document to the notary for notarization. The complainant acknowledged that the signature was in fact his, however, he felt he would have paid more attention to the document if the notary was present and would have realized that the document was to request public assistance (which was against his religious beliefs). The Secretary of the Commonwealth chose not to discipline the notary due to the facts of the case; however, the Commonwealth Court ruled that the failure to discipline was an abuse of discretion. The court indicated it felt notary commission revocation was appropriate but instead ordered that the notary's commission be suspended for a minimum of one (1) year.



#### ◆ **Commonwealth of Pennsylvania, Bureau of**

#### **Commissions, Elections, and Legislation v. Danielle Stormy Renee Hagan, a.k.a. Francine Arlene Zwibel, Francine Forrester, Francine Farmarie, Francine Tyskewicz, Francine Marker, Francine Hagan, File No.: 96-215, Docket No.: 0014-NOT-97**

A notary commissioned under the name Danielle R. Hagan was actually named Francine Arlene Zwibel. On Ms. Hagan's application for a notary commission, she provided false information regarding her name, date of birth, social security number, and criminal record. She was turned in by her daughter (Stormy Renee Hagan) after Stormy learned that her mother was using her (Stormy's) identity to obtain insurance and a driver's license, among other things. Ms. Hagan's commission was revoked. Ms. Hagan was also prosecuted criminally by the Attorney General's office and eventually pled guilty to a third class felony for tampering with public records.

#### ◆ **Commonwealth of Pennsylvania, Bureau of Commissions, Elections, and Legislation v. A. Richard Quigley, File No.: 96-014, Docket No.: 0006-NOT-97**

In this case the Respondent was charged with altering the reported tax on vehicle sales tax forms and then keeping the money. The Respondent also charged notary fees in excess of those prescribed by the Secretary of the Commonwealth. The Respondent's notary commission was revoked and his agent status with the Department of Transportation was suspended and then revoked.

#### ◆ **Commonwealth of Pennsylvania Bureau of Commissions, Elections, and Legislation v. Cesare Sportelli, File No.: 97- 190, Docket No.: 0057-99-97**

The notary in this case held multiple licenses/commissions/certifications issued by the Department of State. Sportelli held a real estate sales license and was attempting to get a real estate broker's license. He took the broker's test three times and failed. The fourth time he was caught cheating on the test. At a hearing before the State Real Estate Commission, Sportelli claimed the calculator and cheat sheet attached to the calculator were not his. The State Real Estate Commission did not believe his testimony and refused to grant him a license. Several years later he again appeared before the State Real Estate Commission to request that he be permitted to take the broker's test. At that hearing Sportelli admitted he lied under oath at the first hearing. He then proceeded to try to demonstrate that he was of good moral character by indicating that he was, among other things, a commissioned notary public. An Order to Show Cause was then submitted, alleging that the Respondent's notary commission should be revoked because

he admitted he lied under oath to the State Real Estate Commission. Several months later Sportelli's notary commission was revoked after a hearing on the matter.

### ◆ Commonwealth of Pennsylvania, Bureau of Commissions, Elections, and Legislation v. Dorothy Toner

A notary was employed by a car dealership and failed to require the personal appearance of customers when notarizing Bureau of Motor Vehicles (BMV) documents. When the notary received notice from the Bureau of Commissions, Elections, and Legislation about the illegal nature of the practice, she stopped the practice and refused to notarize documents without the customers being present. She was fired by her employer because she refused to continue to violate the Notary Public Law. Her notary commission was suspended and she later sued the employer for wrongful termination. She won her lost back wages because she was fired for refusing to perform an illegal act after she informed the employer the act was illegal.

*Pennsylvania law does not require a test or any notary education class before obtaining a notary commission.*



Some states, such as Pennsylvania, California and Maine, have strict disciplinary guidelines for notary wrongdoing. Other states impose penalties based on the severity of the infraction, at the discretion of the Governor, Secretary of State or other high-ranking elected official. Notary laws are constantly being revised to add muscle to penalties against notaries who practice unlawfully.

## WATCH FOR SIGNS OF FRAUD!

Many notaries would never knowingly violate notary laws or improperly execute a notarial act. However, the prudent notary should be alert for customers who may try to use you in an intentional attempt to commit fraud. The following are a few items to watch for:

- *Altered identification cards: Raised edges around photo; any visible evidence of tampering. Always verify signatures; observe birth year to assess accuracy with the individual before you; confirm address, height, etc.*
- *Blank spaces on document; alterations on document; document not dated, or signature dated after date of notarization. Never notarize a signature with correction fluid applied to document.*
- *Nervous, aggressive, hostile or intimidating clients.*
- *Watch for visible indications of coercion. If one signer is attempting to force or intimidate another signer to sign, do not notarize the document.*

A law in Florida states that a notary failing to require personal appearance is subject to a fine of \$5,000 and revocation of commission. Other states will continue to intensify their notary laws, and establish stronger penalties against notaries who break those laws. Notaries, don't do any favors for friends, family or employers that could result in a lawsuit against you! Require personal appearance for every notarization, with no exceptions. You never know when you may be found liable. The cost could be monumental, and it's simply not worth the risk.

If you do not know your state's notary laws, you should. Take time to study these laws, call ASN for seminar or teleconference training, and follow proper notarial procedures... before you find yourself in court!